

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mauna Loa Vacation Ownership, L.P., a)
Hawaiian limited partnership, and)
Stevens, a single man,)

Plaintiffs,)

vs.)

Accelerated Assets, L.L.C., an Arizona)
limited liability company,)

Defendant.)

No. CV-03-0846-PCT-DGC

ORDER AND JUDGEMENT

Defendant Accelerated Assets, L.L.C. has filed a motion to enforce a settlement agreement with Plaintiffs Mauna Loa Vacation Ownership, HLP and John Stevens. Dkt. #136. Plaintiffs have not responded. The Court will grant the motion.

Following a bench trial in February of 2006, the Court granted judgment to Defendant on its counterclaim. Dkt. #128. The parties then entered into a settlement agreement titled a "Stand Still Agreement." Dkt. #136, Ex. 1. The Court dismissed the case, but reserved jurisdiction to enforce the agreement. Dkt. #135.

Plaintiffs made some payments required by the agreement, but later told Defendant they would not make the final payment when it became due. Dkt. #136, Ex. A ¶ 7. The parties then entered into a Forebearance Agreement, by which Defendant agreed not to enforce the Stand Still Agreement until January 31, 2007, provided that Plaintiffs pay an additional extension fee. *Id*; see also Dkt. #136, Ex. 2. On February 1, 2007, Plaintiffs

1 requested an additional extension until February 28, 2007 to pay the amount owed. *Id.*,
2 Ex. 3. Defendant stated that it would grant a final extension until March 15, 2007, but would
3 wait no longer to enforce the Stand Still Agreement. *Id.* Plaintiffs have not made the
4 required payment and have indicated that they will not be making the payments in the near
5 future. *Id.*, Ex. A.

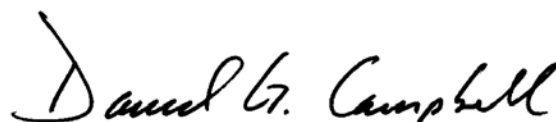
6 Defendant quantifies the amount owed as \$542,664.53 as of March 15, 2007, with
7 interest accruing at \$167.18 per day. *Id.*, Ex. B. Although Defendant argues that Plaintiffs
8 consented to the quantification of this amount in an email attached as the second of the
9 exhibits labeled "Exhibit 2," the email does not contain express consent by the Plaintiffs
10 regarding the quantification procedures. *Id.*, Ex. 2.

11 The Court properly retained the authority to enforce the Stand Still Agreement. *See*
12 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381-82 (1994); *Callie v. Near*,
13 829 F.2d 888, 890 (9th Cir. 1987). The Court has reviewed the amount Defendant claims
14 Plaintiffs owe, and agrees that Plaintiffs owe this amount and have failed to pay it. The
15 proper means by which to enforce the Stand Still Agreement is to enter judgment against
16 Plaintiffs for the amount due. *See TNT Marketing, Inc. v. Agreseti*, 796 F.2d 276, 278 (9th
17 Cir. 1986). Defendant is not precluded from requesting attorney's fees in a separate motion.

18 **IT IS ORDERED:**

- 19 1. Defendant's motion to enforce the settlement agreement (Dkt. #136) is
20 **granted.**
21 2. Judgment is granted to Defendant and against Plaintiffs Mauna Loa Vacation
22 Ownership, HLP and John Stevens in the amount of \$542,664.53 plus interest
23 of \$167.18 per day from March 15, 2007.

24 DATED this 15th day of May, 2007.

25
26 
27

28
David G. Campbell
United States District Judge